

DOCUMENT TYPE	Policy
TITLE	SURVEILLANCE DEVICES
NUMBER:	POL-1015

PURPOSE

This policy provides guidance to Authorised Officers and community members on the ethical, lawful and efficient use of optical and listening surveillance devices including body worn-cameras, dash cam devices, stationary surveillance cameras and the retention, storage and release of recorded data.

DEFINITIONS

APP means the Australian Privacy Principles set out in Schedule 1 of the Privacy Act.

Authorised Officer means an employee of the Shire who is authorised by the Chief Executive Officer or Council for the purposes of the administration and enforcement of any Act, regulations or local laws which relate the functions and powers of the Shire.

FOI Act means the Freedom of Information Act 1992.

Listening Surveillance Device means any instrument, apparatus, equipment, or other device capable of being used to record, monitor or listen to a private conversation or words spoken to or by any person in private conversation but excludes the use of a hearing aid.

Optical Surveillance Device means any instrument, apparatus, equipment, or other device capable of being used to record visually or observe a private activity. It does not include, for example, spectacles or contact lenses.

Principal Party means-

- a) in relation to a private conversation, a person by or to whom words are spoken in the course of the conversation; and
- b) in relation to a Private Activity, a person who takes part in the activity.

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Act Review means the Australian Government Privacy Act Review 2022.

Privacy Act Review recommendations means the list of proposals published in the Privacy Act Review.

Private Activity means any activity carried on in circumstances that may reasonably be taken to indicate that any of the parties to the activity desires it to be observed only by themselves but does not include an activity carried on in any circumstances in which the parties to the activity ought reasonably to expect that the activity may be observed.

Private Conversation means any conversation carried on in circumstances that may reasonable be taken to indicate that any of the parties to the conversation desires it to be listened to only by themselves but does not include a conversation carried on in any

circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard.

SDA means the Surveillance Devices Act 1998.

Surveillance Device means a listening surveillance device, an optical surveillance device or a tracking device.

Tracking Device means any instrument, apparatus, equipment, or other device capable of being used to determine the geographical location of a person or object.

Workplace Occupational Violence means when an Authorised Officer is abused, threatened or assaulted while undertaking Shire duties which may cause either physical or psychological harm, or both, and therefore making that behaviour a risk to the health and safety of the Authorised Officer.

POLICY STATEMENTS

PRINCIPLES

Authorised Officers will be fitted with surveillance devices to assist in the administration and enforcement of Acts, regulations and/or Local Laws which relate to the function and powers of the Shire.

The SDA, as amended from time to time, governs the use of audio and video footage that captures persons in public and forms the basis of this policy.

OBJECTIVES

The objectives of this policy are to:

1. improve the safety of Shire employees undertaking their duties as Authorised Officers;
2. discourage antisocial behaviours of whatsoever nature directed towards Authorised Officers undertaking their duties;
3. obtain and secure evidence of incidents and/or crimes covered under Acts, Regulations and/or Local Laws related to the function and powers of the Shire;
4. ensure transparency and accountability of Authorised Officers in interactions with members of the public while undertaking Shire duties;
5. support investigative processes reported by Authorised Officers or members of the public;
6. ensure that collection of recorded data on surveillance devices is stored in accordance with legislative and procedural requirements;
7. protect the confidentiality of and in stored recorded data from surveillance devices in accordance with the SDA and FOI Act;
8. ensure that any inadvertent recorded data on surveillance devices which captures a Private Activity is destroyed in accordance with this policy; and
9. ensure that the release of recorded data on surveillance devices is strictly in accordance with this policy.

RECORDING

Authorised Officers may only activate a surveillance device when:

1. there is a reasonably held concern for the Authorised Officer's or other persons' safety and/or welfare;
 2. where there is a Workplace Occupational Violence incident or whether the Authorised Officer's assessment indicates that a Workplace Occupational Violence incident may occur;
 3. to gather evidence arising from a breach of an Act, Legislation, Regulation and/or a Local Law
- (Shire Authorised Recording Authority).

Authorised Officers must not activate a surveillance device unless it is in accordance with the Shire Authorised Recording Authority.

In the event that an Authorised Officer activates a surveillance device in breach (inadvertently or otherwise) of the Shire authorised Recording Authority, the Authorised Officer must :

- (a) deactivate the surveillance device as soon as practicable after assessing that :
 - i. there is no concern for the Authorised Officer's or other persons' safety and/or welfare;
 - ii. there is no Workplace Occupational Violence incident occurring or which may occur;
 - or
 - iii. there is no breach of an Act, Legislation, Regulation and/or a Local Law;
- (b) provide a written report of the breach of the Shire Authorised Recording Authority to the Shire's Chief Executive Officer (CEO).

The SDA provides in section 5(1)(b) that it is an offence to record a private conversation to which that person is a party however subsection (2)(e) exempts a person from committing such offence where the use of a listening device results in the unintentional hearing of a private conversation. Subsection (3)(c) and (d) provide an exemption where each party to the private conversation expressly or impliedly consents to the use of the listening device or where the use is reasonably necessary for the protection of the lawful interests of that principal party.

Section 6(1)(b) and subsection (2)(e) and 3(a) or (b)(ii) SDA mirrors section 5(1)(b) in respect to the use of an optical surveillance device.

RETENTION AND STORAGE OF RECORDED DATA

Recorded data will be stored in a secure electronic location with access restricted to Shire officers with the delegated authority of the CEO (Delegated Officers).

Recorded data will be protected from unauthorised viewing, copying, altering and disclosure by the Delegated Officers.

Recorded data required, or which may be required, as evidence in any legal and/or regulatory process will be retained in accordance with the State Records Act 2000.

Recorded data which is not required as evidence in any legal and/or regulatory process will be permanently deleted after a period of 62 days from the date of capture by the surveillance device.

CONFIDENTIALITY

All recorded data will be kept confidential and dealt with in accordance with the provisions of section 9 of the SDA, the FOI Act.

Even though Shire is not required to comply with the Privacy Act including the APP, any matter arising from the Privacy Act Review or the Privacy Act Review recommendations as published from time to time, it will take into consideration those provisions as a guide to best practice in protecting confidentiality in data retention and storage and the release of data.

A person has the right to apply to the CEO for access to review recorded data which captures that person and the application will be dealt with in accordance with the FOI Act.

The identification of any person/s or incidents captured by a surveillance device by Authorised Officer which is disclosed to third parties including but not limited to family, friends, acquaintances or the media is a breach of this policy and will be deemed a serious breach of the Shire's employee code of conduct and terms of employment. A breach will not occur where the Authorised Officer has the prior written consent of the party and/or incidents captured by the surveillance device.

RELEASE OF DATA

Recorded data will only be released to a member of the Western Australia Police Force or when served with an order of a court of competent jurisdiction of any State or Territory in Australia.

COMPLAINTS

Any complaints regarding the capturing, retention and storage, confidentiality or release of data captured by a surveillance device may be made in writing to the CEO which will be dealt with in accordance with CP/CS-3280 Complaint Handling Policy.

PROCEDURES

The Shire's procedures to support the implementation of this policy in accordance with the Surveillance Devices Act 1998 are included with the CCTV Management and Operation Manual.

EXPLANATORY NOTES

The Surveillance Devices Act 1998 regulates the use of surveillance devices in Western Australia and restricts the communication and publication of information obtained through use of surveillance devices. Proceedings arising from an offence of the Surveillance Devices Act 1998 must be commenced within 2 years from the date when the offence is alleged to have been committed.

APPLICATION

This policy applies to Authorised Officers approved by the Chief Executive officer to use surveillance devices during the course of performing their duties.

DOCUMENT AND VERSION CONTROL

Responsible Directorate	Office of the CEO		
Responsible Officer	Chief Executive Officer		
Statutory References	<i>Surveillance Devices Act 1998 (WA)</i> <i>Local Government Act 1995 (WA)</i> <i>Freedom of Information Act 1992 (WA)</i> <i>State Records Act 2000 (WA)</i>		
Related Documents	POL-2015 Closed Circuit Television (CCTV) WI-4007 Ranger Standard Operation Procedures		
Amendment History (Adoption and last 3 amendments)			
Version	Date Issued - Resolution Number	Item #	Description of Change
1.0	24/03/2020 - 118179	12.2.3	Council Adoption (previously CP-GOV-3113)
1.1	TBA	TBA	Reviewed Adopted by Council
Date of Next Review		March 2025	

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